IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P. No.6894 of 2006
Date of decision: May 24 ,2007

Ramphal V. Chief Canal Officer and others

CORAM: HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

Present: Shri Arun Jain,Advocate, for the petitioner.
Shri A.K.Rahee,Additional Advocate General,Haryana for respondents No.1 to 3.
Shri Ramesh Hooda, Advocate,for respondents No.4 to 9.

P.Sathasivam,J.

Aggrieved by the orders of respondents No.1 to 3 ordering transfer of 26 acres of land from the chak of outlet at RD.16430-L to the chak of outlet at RD.19830-L Juan Disty, one Ramphal, resident of village Khizerpur Jat, Tehsil and District Sonepat has filed the above writ petition.

Brief facts are :

Juan Distributary Caters to the irrigation of 527 acres of land in village Khizerpur Jat through a watercourse at outlet RD.19830-L, Juan Disty. According to the petitioner, this watercourse is 3 kilometres long and passes through the lands of two villages,namely, Badshahpur Machhri and Kirawari as a dedicated watercourse. The land of village Khizerpur Jat falls thereafter. For 246 acres of land of village Badshahpur Machhri,

there are two watercourses provided at outlet RD.16430-L and outlet RD.20650-L, Jaun Disty. for the last 50-60 years. From these two watercourses the irrigation of this area is 100%. Some of the shareholders of village Badshahpur Machhri i.e. contesting respondents, who are receiving water from outlet at RD.16430-L for the last 50-60 years filed a petition under section 18(2) of the Haryana Canal and Drainage Act,1974 before the Divisional Canal Officer, Sonepat seeking transfer of 26 acres of land from the chak of outlet at RD.16430-L to the chak of outlet at RD.19830-L.

The Divisional Canal Officer, third respondent herein, despite objections from the petitioner and other share holders of village Khizerpur Jat ordered the transfer of 26 acres of land as claimed by them. Feeling aggrieved from the order of the Divisional Canal Officer, the petitioner and other share holders of outlet RD 19830-L filed an appeal before the Superintending Canal Officer, Yamuna Water Services Circle, Delhi, second respondent herein. According to the petitioner, it was pleaded before the said officer that watercourse at outlet RD.19830-L takes about 6 hours for the water to reach their fields from Juan Disty. and in case transfer of 26 acres of land is allowed, it will cause substantial and irreparable loss to them. It was also pleaded before him that the claim of transfer is neither in the interest of irrigation nor they would be able to get water for irrigation of their fields. However, the Superintending Canal Officer vide order dated 22.7.2004 while dis-allowing transfer of the area comprised in Killa No.29//2-9-12-19-22 ordered transfer of the remaining area to the chak of outlet at RD.19830-L Juan Disty. and ordered that warabandi of this area be allowed at outlet RD-19830-L Juan Disty.

Dissatisfied from the order of the Superintending Canal

Officer, the petitioner filed an appeal before the Chief Canal Officer. The said officer called for a report from the Divisional Canal Officer and on receipt of the report, the Chief Canal Officer accepted the transfer of land in question to the chak of outlet at RD.19830-L Juan Disty., but feeling that it may lead to unwanted situation, he directed that the proposed arrangement be monitored for the next two crops and report be sent by the Superintending Canal Officer on the status of irrigation.

Feeling aggrieved from all the three orders, the petitioner has filed the above writ petition:

We have heard the learned counsel for the parties.

The only point for consideration in this petition is whether respondents No.1 to 3 are justified in acceding to the request of the respondents No.4 to 12 in transferring 26 acres of land from the chak of outlet at RD.16430-L to the chak of outlet at RD.19830-L Juan Disty. ?

At the foremost it is our duty to point out that the petitioner has not filed the above writ petition in a representative capacity on behalf of the villagers of Khizerpur Jat. There is no specific plea that he was authorised to take their cause and agitate the same before this court.

Coming to the merits of the impugned orders, when the private respondents made an application for transfer of area of 26 acres from the chak of outlet at RD.16430-L to the chak of outlet at RD.19830-L along with providing a naka in the blind watercourse in Killa No.29//161-2 village Badshahpur Machhri,Tehsil and District Sonepat, the Divisional Canal Officer issued notices to all the concerned shareholders for inviting objections and suggestions and thereafter fixed a date of hearing on 17.11.2003 at Canal Colony,

Banderpur, Sonepat. The order of the Divisional Canal Officer further shows that the case was heard on 17.11.2003 at Sonepat and he obtained statements of shareholders who attended the hearing on the said date. It is not in dispute that the applicants as well as respondents were heard in detail by the said officer. He also examined khaka plan and arrived at a conclusion that the area of the applicants is far away and high from the exist outlet RD.16430-L Juan Disty. and nearest to the chak of outlet RD.19830-L Juan Disty. and pacca watercourse passes through their fields. After finding that the area in question will receive proper irrigation from outlet RD.19830-L Juan Disty., the Divisional Canal Officer had accepted the claim of the applicants as genuine and transferred 26/25 acres area from the Chak of outlet RD.16430-L Juan Disty. to the chak of outlet RD.19830-L, same channel along with providing a naka in the blind watercourse in the midest of Killa No.28//16/1-2 in the interest of development of irrigation, on the cost of beneficiaries and subject to approval from the higher authorities.

When the matter was taken up before the Superintending Canal Officer, he also found that the watercourse meant for irrigation of area of village Machhri provided at RD.16430-L is a lengthy watercourse and directed the Sub Divisional Canal Officer to keep in mind the apprehension of the share holders of village Khizerpur Jat (petitioner is one among them), that their water will go waste and that he should make such an arrangement that in case the farmers of village Machhri indulge to cut the water of village Khizerpur Jat, appropriate action may be taken against them under the provisions of the Haryana Canal and Drainage Act for violating the warabandi and fine be imposed. The superintending Canal Officer has also observed that the change should be

maintained only for one year and thereafter Divisional Canal Officer is free to review the position.

Coming to the order of the Chief Canal officer, as mentioned above, he asked for a report from the Superintending Canal Officer and on receipt of the same passed an order confirming the order of the Divisional Canal Officer. The Chief Canal Officer has also extracted report which shows that the Divisional Canal Officer personally inspected the site and after satisfying himself recommended that the land in question can get water only if it is included in the chak of outlet RD.19830-L of Juan Disty. He heavily relied on the report and also took notice of the apprehensions of the villagers of Khizerpur Jat and directed that the land of the respondents should be included in the warabandi in the outlet at the last of the running period so that there is no disruption of the present irrigation arrangement of the share holders. He also directed that the arrangement is to be monitored in the next two crops and after getting status report, next course of action to be initiated.

The above factual details clearly show that all the authorities have not only considered the claim of contesting private respondents, but also uninterrupted the water supply to the petitioner and other villagers of khizerpur Jat. It is also clear that the said transfer of land is not a permanent one. if it is not feasible and against the interest of the villagers of Khizerpur Jat, respondents No.1 and 2 themselves assured that the arrangement will be reviewed and modified. In such circumstances, we are of the view that the apprehensions of the petitioner is baseless and no positive direction is required from our hands.

In the light of what is stated above, we do not find any merit in the claim of the petitioner and we are satisfied that by the

impugned orders, respondents No.1 to 3 have safeguarded the interest of petitioner and his villagers and hence the writ petition is liable to be dismissed. Accordingly the same is dismissed. No costs.

(P. SATHASIVAM)
JUDGE

May 24, 2007 (RAJIVE BHALLA)
sks JUDGE